

**CITY DEVELOPMENT DEPARTMENT-PLANNING
ZONING BOARD OF ADJUSTMENT MEETING MINUTES
COUNCIL CHAMBERS, CITY HALL BUILDING
FEBRUARY 10, 2014
1:30 P.M.**



Mayor
Oscar Leeser

City Council

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Chairman Concha called the meeting to order at 1:32 p.m.

The following Board Members answered roll call:

Mr. Robert Concha, Jr., Chairman
Mr. Robert Garland, Vice-Chairman
Ms. Margaret Livingston
Mr. Roy Gilyard
Mr. Luis De La Cruz
Mr. Jeff Gonzalez
Mr. Rick Cordova
Mr. Othon Medina
Mr. Michael Bray

The following City Staff were present:

Ms. Linda Castle, City Development Department, Senior Planner
Mr. Alex Hoffman, City Development Department, Lead Planner
Ms. Kristen Hamilton, City Attorney's Office, Assistant City Attorney
Mr. Daniel Chavira, Building & Development Permitting, Building Plans Examiner
Mr. Tony De La Cruz, Building & Development Permitting, Senior Plans Examiner

CHANGES TO THE AGENDA

ITEM 5. PZBA14-00004, 1420 Texas Avenue, Greg Stafford and Ryan Stafford
Applicants request item be withdrawn.

MOTION:

*Motion made by Mr. Bray, seconded by Ms. Livingston AND UNANIMOUSLY CARRIED
TO ACCEPT THE AGENDA AS CHANGED.*



REGULAR AND ALTERNATE BOARD MEMBERS REPRESENTING THE SAME CITY COUNCIL REPRESENTATIVE DISTRICT

Prior to discussing items on the agenda, Mr. Medina asked Chairman Concha if he could address some administrative things.

Chairman Concha stated administrative issues would be discussed at the end of the agenda.

To the Board, Mr. Medina asked if either the Regular or Alternate Board Member were representing the same City Council Representative.

To Mr. Medina, Chairman Concha reiterated administrative issues would be discussed at the end of the agenda.

Mr. Medina interjected stating Board Members will be voting on agenda items and this issue was crucial.

Mr. Luis De La Cruz concurred with Mr. Medina.

Chairman Concha recognized Ms. Hamilton to speak.

Should there be a need, Ms. Kristen Hamilton explained, Regular and Alternate Board Members from the same or other City Council Representative Districts may be present at the same ZBA meeting.

Mr. Medina begged to differ and noted he had the floor first; additionally, had the Chairman asked him to yield the floor, he would be glad to do that.

Chairman Concha asked if Mr. Medina would yield the floor at this time.

Mr. Medina responded, "to answer my question".

Chairman Concha again asked Mr. Medina if he would yield the floor.

Mr. Medina then yielded the floor to Ms. Hamilton.

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Ms. Hamilton acknowledged Mr. Medina's disagreement and reiterated, should there be a need, Regular and Alternate Board Members, representing the same or other City Council Representative Districts, may be present at the same ZBA meeting.

Mr. Medina replied he would like a legal opinion from Ms. Sylvia Borunda-Firth, City Attorney or someone else, to verify if that is legal.

Ms. Hamilton explained the City Attorney's office does not provide legal opinions to specific Board Members.

Through the Chair, Mr. Medina asked Chairman Concha to have the lady take it up with the Legal Department.

Ms. Hamilton responded she is in the Legal Department.

Mr. Medina noted he still had the floor and asked Chairman Concha to ask Staff to take the matter up with Legal.

To Mr. Medina, Chairman Concha explained Ms. Hamilton stated she is from the Legal Department and is qualified to speak on these matters.

Mr. Medina responded he wants a legal opinion from the Legal Department.

Chairman Concha noted Mr. Medina's comments would be documented in the minutes.

PUBLIC HEARING
REGULAR AGENDA:

ITEM 1:

Item postponed at the 01-13-2014 ZBA Hearing to the 02-10-2014 ZBA Meeting

PZBA13-00037 7304 Ramada Drive Lorena Chiu
Applicant requests Special Exceptions under Section 2.16.050 C (Rear Yard Setback) ~~and Section 2.16.050 J (Carport over a Driveway)~~ in an R-3 (Residential) zone. This would allow the approval of a site plan which includes demolition of structures

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City Development Department

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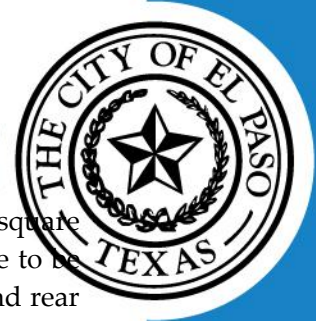
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encroaching in the front yard setback and would allow the existence of 589.68 square feet of patio additions which encroach in the required rear yard setback and are to be located to within 14' of the rear property line. The required cumulative front and rear yard setback total is 50 feet in the R-3 zone district. The applicant was cited for building porch additions without permits; the additions encroach in the required front and rear yard setbacks. Regarding the rear yard setback, the applicant is requesting the Special Exception C to legalize existing patio additions which encroach into the rear yard setback and are more than the 180 square feet of open porch permitted. In order to meet the ZBA requirements, the applicant will be required to cut back the patio additions. Further, in June 1993 the applicant was permitted a carport in the front yard through building permit #93-12616. However, site photos of the property show that the carport has been replaced with new carports which encroach more than 150 square feet into the front yard setback and were built without permit. The applicant has indicated they will reduce the porches in front to be no more than the 150 square feet allowed by the Zoning Code to encroach into the front yard setback. They will withdraw their request for the Special Exception J (Carport over a Driveway).

STAFF RECOMMENDS APPROVAL OF THE REQUEST FOR THE SPECIAL EXCEPTION C PER SUBMITTED SITE PLAN WHICH SHOWS DEMOLITION OF ALL STRUCTURES ENCROACHING MORE THAN THE APPROVED 589.68 SQ. FT. IN THE REQUIRED REAR YARD SETBACK AND DEMOLITION OF ALL STRUCTURES ENCROACHING MORE THAN THE ALLOWED 150 SQUARE FEET IN THE FRONT YARD SETBACK, WITH RELOCATION OF POSTS LOCATED CLOSER THAN 5 FEET TO SIDE PROPERTY LINES TO BE NO CLOSER THAN 5 FEET TO THE PROPERTY LINE(S), AND WITH A CONDITION THAT A BUILDING/DEMOLITION PERMIT IS OBTAINED WITHIN 30 DAYS OF THE DATE OF APPROVAL OF THIS REQUEST FOR ALL WORK SHOWN ON THE SITE PLAN.

The following City staff commented:

1. Ms. Castle gave a presentation and noted Staff received phone calls from two neighbors objecting to the existing structures in the front yard.
2. Mr. Daniel Chavira, Building Plans Examiner
3. Mr. Tony De La Cruz, Senior Plans Examiner

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Chairman Concha asked if anyone in the audience wished to speak in favor of or opposition to the request. *There was no response.*

Mr. Chung Chiu, property owner, was present. Because Staff received two phone calls objecting to the existing structures in his front yard, Mr. Chiu distributed copies of statements from neighbors, residing within 300 feet of his property, stating they were not opposed to the existing structure in the front. *He requested Board Members allow him to maintain the existing carport and front porch.* Mr. Chiu stated he would demolish a portion of the patio in the rear to comply with the Code. After much discussion amongst Board Members and Staff, Mr. Chiu stated he would like to come back another time.

Mr. Medina asked the Chairman if this Board was reactive or active and then requested, in writing, what the powers of this Board are.

Chairman Concha responded this Board is reactive, based on Staff's recommendations.

Chairman Concha and Board Members Mr. De La Cruz, Mr. Medina, Mr. Bray, and Mr. Cordova commented.

1st MOTION:

Motion made by Mr. De La Cruz, seconded by Ms. Livingston AND UNANIMOUSLY CARRIED TO TABLE THE ITEM.

After the vote, Mr. Medina asked Chairman Concha if the applicant understood the motion, if not, would the Chairman explain.

Chairman Concha informed Mr. Chiu that the Board had neither approved nor denied the request, only that the request was tabled.

Mr. Chiu responded he understood.

Mr. Gonzalez explained the Board has tabled the request to allow sufficient time to present timely, complete, organized, and structurally sound plans and to clarify what procedures/processes would be taken to become compliant with the Code.

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Rather than an ambiguous motion, Mr. Gilyard requested the Board state how long the request is tabled or specify when the request would be presented to the Board again.

Ms. Castle requested Board Members table the request for four weeks or until the next regularly scheduled meeting.

2nd MOTION:

Motion made by Mr. Gonzalez, seconded by Mr. Livingston AND CARRIED TO RECONSIDER PZBA13-00037.

NAY: Mr. Medina

Motion passed. (8-1)

Mr. Medina stated he had requested a point of order prior to the motion and explained point of order takes precedent over a motion.

3rd and FINAL MOTION:

Motion made by Mr. De La Cruz, seconded by Ms. Livingston AND UNANIMOUSLY CARRIED TO TABLE FOUR (4) WEEKS OR UNTIL THE NEXT REGULARLY SCHEDULED MEETING.

ITEM 2:

PZBA13-00041 3820 Skyline Avenue Anastacio & Floriza I. Valdez
Applicants request a Special Exception under Section 2.16.050 J (Carport over a Driveway) in an R-4 (Residential) zone. This would allow a new 18'6" by 19'3" (356 sq. ft.) carport that is proposed to encroach in the required front yard setback and to be located to within 5 feet of the front property line. The required cumulative front and rear yard setback total in the R-4 zone district is 45 feet. The applicant is requesting to build a carport over the driveway that will match the house in design and materials. There is no utility easement at the front property line. Building Permits & Inspections reviewed the structural plans and found them to be deficient due to over spanned beams throughout the structure. Should the special exception be granted, corrected plans will be required before the issuance of permits. A site visit reveals an accessory building that may be located closer than 5 feet to the main structure.

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STAFF RECOMMENDATION IS FOR APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS FOR THE SPECIAL EXCEPTION J, WITH A CONDITION THAT CORRECTED PLANS ARE SUBMITTED PER BUILDING PERMITS & INSPECTIONS' STRUCTURAL REPORT.

The following City staff commented:

1. Ms. Castle gave a presentation and noted Staff did not receive any response from the neighbors
2. Mr. Daniel Chavira, Building Plans Examiner

Mr. Anastacio Valdez, property owner, was present.

Chairman Concha asked Board Members if they had any questions for Mr. Valdez.
There were none.

1st MOTION:

Motion made by Mr. De La Cruz, seconded by Ms. Livingston TO APPROVE.

Prior to the vote, Chairman Concha asked if anyone in the audience wished to speak in favor of or opposition to the request.

To allow further discussion, Chairman Concha asked Mr. De La Cruz to withdraw his motion. Mr. De La Cruz withdrew his motion.

Mr. Arthur Caldwell, abutting property owner, objected to the proposed carport. He asked if Staff would notify him, in advance, regarding future requests. He understood the proposed construction would lower his property values.

Chairman Concha, Vice-Chairman Garland and Board Members Mr. De La Cruz, Mr. Gilyard, Mr. Bray, and Ms. Livingston commented.

2nd MOTION:

Motion made by Ms. Livingston, seconded by Mr. De La Cruz TO APPROVE.

Chairman Concha requested the motion include the condition, as requested by Staff.

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FINAL MOTION RESTATED:

Motion made by Ms. Livingston, seconded by Ms. Livingston TO APPROVE SUBJECT TO THE STRUCTURAL PLANS ARE SUBMITTED PER BUILDING PERMITS & INSPECTIONS' STRUCTURAL REPORT.

NAY: Mr. Gilyard

Motion passed. (8-1)

ITEM 3:

PZBA14-00001

8708 Lait Drive

B. Katherine Stern

Applicant requests Special Exceptions under Section 2.16.050 C (Rear Yard Setback) in an R-4 (Residential) zone. This would allow a new addition of which a 14' by 8' (112 sq. ft.) portion is proposed to encroach into the required rear yard setback and to be located to within 17 feet of the rear property line. The required cumulative front and rear yard setback total is 45 feet in the R-4 zone district. The applicant had previously received ZBA approval in October 1988 for a 15' by 11' addition located to within 17' of the rear property line (see enclosed copy of decision card). She is now requesting another addition (144 sq. ft.); she is still under the square footage allowed by the Special Exception C.

STAFF RECOMMENDS APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION C.

Ms. Castle gave a presentation and noted Staff received two phone calls from neighbors, neither of whom were in favor of or in opposition to the request.

Mr. De La Cruz stated his residence was not far from the property owner's address. He asked Ms. Hamilton if he would have to recuse himself from the meeting and from the vote.

Ms. Hamilton explained if Mr. De La Cruz had a financial interest then he would have to recuse himself.

Mr. Carlos Carreto, contractor, was present.

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Chairman Concha asked if Board Members had questions for Mr. Carreto. *There were none.*

Chairman Concha asked if anyone in the audience wished to speak in favor of or opposition to the request. *There was no response.*

MOTION:

Motion made by Vice-Chairman Garland, seconded by Mr. De La Cruz AND UNANIMOUSLY CARRIED TO APPROVE.

Prior to the presentation, Mr. Gonzalez briefly left the meeting.

ITEM 4:

PZBA14-00003 2400 Fletcher Place Juan and Graciela T. Martinez
Applicants request a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-3A (Residential zone. This would allow a 33'7" by 28'7" addition of which an approximate 33'7" by 10' portion (283 square feet) is proposed to encroach into the required rear yard setback and to be located to within 10 feet of the rear property line. The required cumulative front and rear yard setback total in the R-3A zone district is 45 feet. The applicants are requesting great room and patio additions; a portion of the great room will encroach in the required rear yard setback.

STAFF RECOMMENDS APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION C.

Ms. Castle gave a presentation and noted Staff did not receive any responses from the public.

Chairman Concha asked if Board Members had questions for Ms. Martinez. *There were none.*

Chairman Concha asked if anyone in the audience wished to speak in favor of or opposition to the request. *There was no response.*

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MOTION:

Motion made by Ms. Livingston, seconded by Mr. Cordova AND UNANIMOUSLY CARRIED TO APPROVE.

NOT PRESENT FOR THE VOTE: Mr. Gonzalez

ITEM 5:

PZBA14-00004 1420 Texas Avenue Greg Stafford & Ryan Stafford

Applicants request a Special Exception under Section 2.16.050 B (Two or more Non-conforming) in a C-4 (Commercial) zone. This would allow a new 50' by 120' warehouse addition which is proposed to encroach into the required rear yard setback and to be located to within 0 feet of the rear property line. The required rear yard setback in the C-4 zone district is 10 feet. The applicants are requesting a warehouse addition to be built to 0 feet of the rear property line. There are several properties in the same block and in the block across the street with the same nonconforming situations, built to the rear property line. At least three of these properties exist today as they existed in the 1956 aerial: the property adjacent to the subject property at 1400 Texas and two properties across the street at 1409 and 1431 Texas. The subject property is legally nonconforming, existing in the 1956 aerial built to 0 feet of the side street and rear property lines.

STAFF RECOMMENDATION IS THAT THE APPLICANT WITHDRAW THE REQUEST TO THE ZBA AND APPLY FOR A SPECIAL PERMIT FOR A 100 PERCENT PARKING REDUCTION.

CHANGES TO THE AGENDA

ITEM 5. PZBA14-00004, 1420 Texas Avenue, Greg Stafford and Ryan Stafford

Applicants request item be withdrawn.

MOTION:

Motion made by Mr. Bray, seconded by Ms. Livingston AND UNANIMOUSLY CARRIED TO ACCEPT THE AGENDA AS CHANGED.

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At this time, Mr. Gonzalez returned.

Prior to the meeting, Staff distributed revised site plans submitted by the applicant's representative.

ITEM 6:

PZBA14-00005 1739 Billy Casper Drive Mitchell Farrell
Applicant requests a Special Exception under Section 2.16.050 C (Rear Yard Setback) in an R-3 (Residential) zone. This would allow a 22' by 22'6" addition of which a 129 square feet portion is proposed to encroach into the required rear yard setback and to be located to within 16 feet of the rear property line. The required cumulative front and rear yard setback total in the R-3 zone district is 50 feet. The applicant is requesting the special exception for a two story addition; a portion of the addition on the second story will encroach in the required rear yard setback. A site visit reveals that there is a pool in the rear yard and possibly other additions to the property which are not shown on the site plan.

STAFF RECOMMENDATION IS PENDING THE RECEIPT OF A REVISED SITE PLAN.

Ms. Hamilton explained although Staff recommends that either the applicant and/or the representative be present, Staff could present the case to the Board.

At this time, Mr. Armando Garcia, Civil/Structural Engineer representing the applicant, was present.

Ms. Castle gave a presentation and noted Staff did not receive any responses from neighbors.

Chairman Concha asked if Board Members had questions for Mr. Garcia.

Board Members Mr. De La Cruz and Mr. Bray commented.

Chairman Concha asked if anyone in the audience wished to speak in favor of or opposition to the request. *There was no response.*

MOTION:

Motion made by Mr. Medina, seconded by Mr. Bray AND UNANIMOUSLY CARRIED TO APPROVE.

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Other Business

7. Discussion regarding postponements.

The following City staff commented:

1. Ms. Hamilton suggested Staff prepare language amending the City Code ordinance.
2. Ms. Castle noted the ZBA Bylaws have not been updated in quite some time.

Chairman Concha, Vice-Chairman Garland and Board Members Mr. Medina, Mr. Bray, Mr. Gonzalez, and Ms. Livingston commented.

Regarding recurring postponements, Mr. Gonzalez asked Staff to include information in the Staff Report regarding what occurred in previous Board meetings such as requests made by the Board, information to be provided by the applicant/representative, submittal of documents (signed, sealed by a licensed engineer) by applicant/representative within a specific timeframe, hold the applicant/representative accountable to submit document(s) requested by the Board within a specific timeframe, inserting some type of trigger limiting the number of postponements allowed enabling Staff to be firm and authoritative.

Staff will draft language amending the ordinance to present to the Board at the next regularly scheduled meeting.

8. Discussion about date for training session on the ZBA ordinance, to include special exceptions, variances, ZBA bylaws and a report on ZBA activity for 2013.

It was determined that Staff place an item regarding training to include special exceptions, variances, ZBA bylaws and a report on ZBA activity for 2013, after the Easter holiday.

9. Information about Ethics and Open Meetings Training for new members.

Ms. Castle explained new members must take the online City of El Paso Ethics and Open Meetings Act training. She provided handouts of the website links for both training sessions. Ms. Castle will review the Board Members files to ensure compliance.

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10. Discussion regarding future meeting minutes.

Ms. Castle explained verbatim minutes are not required. Future meeting minutes will be brief, listing Board Members and Staff present, who commented, motions and votes (unanimous, number of ayes/nays), outcome of the vote. By reviewing the minutes, Ms. Castle will ensure necessary comments are shown.

Should Board Members request, Staff will copy a recording of the meeting onto USBs.

11. Discussion regarding items for future agendas.

As a courtesy, Staff will place this item on future agendas for the Board.

At this time, Ms. Hamilton explained, Board Members cannot discuss future agenda items. Staff is merely asking Board Members if they would like to have specific issues posted on the agenda for discussion and action.

Mr. Medina requested the following:

1. Is this Board reactive or active, clarification and presentation
(Discussion whether certain items can be initiated by the Board rather than the Board simply reacting to Staff.)
2. On a regular basis, Staff provide a list of zoning violation inspections:
 - a. Number of inspections
 - i. Passed
 - ii. Denied

Mr. Bray explained the Building and Standards Commission oversees structures/properties deemed dangerous and whether the owners will be ordered to secure, repair, remove or demolish.

Ms. Hamilton clarified lists of zoning violations are not within the purview of the Zoning Board of Adjustment.

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3. Does the Board have the authority to request such a list (zoning violation inspections)

4. Is Legal counsel present to serve the Board or the Staff

Ms. Hamilton explained counsel is present to ensure compliance and to ensure the law is complied with during meetings, and to provide legal advice on the conducting of the meeting.

Mr. Bray noted Mr. Medina was off the agenda.

12. Approval of Minutes: January 13, 2014

Chairman Concha asked the Board if they had additions, corrections and/or revisions for Staff. *There were none.*

MOTION:

Motion made by Vice-Chairman Garland, seconded by Ms. Livingston AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES.

ABSTAIN: *Messrs. De La Cruz, Cordova, and Bray*

Prior to adjourning, Mr. Gilyard requested Staff place items on the agenda as "Discussion and Action" rather than "Discussion" only.

Ms. Hamilton explained anything the Board discusses must be posted on the agenda.

13. Adjournment

MOTION:

Motion made by Mr. Gilyard, seconded by Mr. De La Cruz AND UNANIMOUSLY CARRIED TO ADJOURN THE MEETING AT 3:09 P.M.

Linda Castle, Senior Planner

Mayor

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